



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0467; EPA-R05-OAR-2012-0538; FRL-9808-9]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; Prevention of Significant Deterioration Greenhouse
Gas Tailoring and Biomass Deferral Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Wisconsin State Implementation Plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on May 4, 2011, June 20, 2012, and September 28, 2012. The revisions modify Wisconsin's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Wisconsin's PSD permitting requirements for their greenhouse gas (GHG) emissions. Additionally, these revisions defer until July 21, 2014, the application of the PSD permitting requirements to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources in the State of Wisconsin. EPA has made the preliminary determination that these revisions are in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs and is approving Wisconsin's revisions.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2011-0467, or EPA-R05-OAR-2012-0538. All documents in the docket are listed in the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353-8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8781, marcus.danny@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is being addressed by this document?
- II. What comments did we receive on the proposed rule?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

I. What is being addressed by this document?

On December 28, 2012, at 77 FR 76430, EPA proposed to approve into the state's Federally-approved SIP regulatory additions that Wisconsin submitted which are consistent with the "PSD and Title V Greenhouse Gas Tailoring; Final Rule," 75 FR 31514 (June 3, 2010) (The "Tailoring Rule"), the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans Final Rule," 75 FR 82536 (December 30, 2010) (The "PSD SIP Narrowing Rule") and the "Deferral for CO₂ Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs; Final Rule" 76 FR 43490, July 20, 2011.

These rules establish thresholds and time frames that ensure that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements for the GHGs that they emit, and defer consideration of CO₂

emissions from bioenergy and other biogenic sources (biogenic CO₂ emissions) when determining whether the modification of a stationary source would result in a net emissions increase that would trigger PSD thresholds and would require the application of Best Available Control Technology.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on January 28, 2013. EPA received one comment supporting EPA's approval of these revisions. EPA received no adverse comments.

III. What action is EPA taking?

EPA is approving Wisconsin's May 4 2011, June 20 2012, and September 28 2012, SIP submittals. Specifically, EPA is approving revisions to chapters NR 400.02 (74m); 400.03 (3) (om), and (4) (go) and (kg); 405.02 (28m); 405.07 (9) of the Wisconsin Administrative Code and Wisconsin State Statutes, Sections 285.60(3m) and 285.63(3m) into the SIP. These revisions implement the Tailoring Rule and Deferral of CO₂ emissions from biogenic sources.

Because Wisconsin's changes to its air quality regulations will incorporate the appropriate thresholds for GHG permitting applicability into its SIP, EPA is also amending 40 CFR 52.2572, to remove subsection (b), which is being replaced by the new rules that Wisconsin has submitted. The new rules are

consistent with the Federal Tailoring Rule provisions, which limit the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not

impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: April 22, 2013

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by adding paragraph (c)(126) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(126) On May 4, 2011, June 20, 2012, and September 28, 2012, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's Prevention of Significant Deterioration (PSD) program to incorporate the "Tailoring Rule" and the Federal deferral for biogenic CO₂ emissions into Wisconsin's SIP.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 400.02 Definitions.

NR 400.02 (74m) "Greenhouse gases" or "GHG", as published in the Wisconsin Administrative Register August 2011, No. 668, effective September 1, 2011.

(B) Wisconsin Administrative Code, NR 400.03 Units and abbreviations. NR 400.03(3)(om) "SF₆", NR 400.03(4)(go) "GHG", and NR 400.03(4)(kg) "PFC", as published in the Wisconsin Administrative Register August 2011, No. 668, effective

September 1, 2011.

(C) Wisconsin Administrative Code, NR 405.02 Definitions.
NR 405.02(28m) "Subject to regulation under the Act", as
published in the Wisconsin Administrative Register August 2011,
No. 668, effective September 1, 2011.

(D) Wisconsin Administrative Code, NR 405.07 Review of major
stationary sources and major modifications – source
applicability and exemptions. NR 405.07(9), as published in the
Wisconsin Administrative Register August 2011, No. 668,
effective September 1, 2011.

(E) Wisconsin Statutes, section 285.60(3m) Consideration of
Certain Greenhouse Gas Emissions, enacted on April 2, 2012, by
2011 Wisconsin Act 171.

(F) Wisconsin Statutes, section 285.63(3m) Consideration of
Certain Greenhouse Gas Emissions, enacted on April 2, 2012, by
2011 Wisconsin Act 171.

§ 52.2572 [Amended]

3. Section 52.2572 is amended by removing and reserving
paragraph (b).